

Peter Van Tuyn (AK Bar No. 8911086)
Karen Schmidt (AK Bar No. 1211113)
BESSENYEY & VAN TUYN, L.L.C.
911 West 8th Avenue, Suite 101, PMB 59
Anchorage, AK 99501
Phone: (907) 278-2000
peter@bvt-law.com
karen@bvt-law.com

Attorneys for Applicant Intervenor-Defendants Bristol Bay Native Corporation

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA
AT ANCHORAGE

NORTHERN DYNASTY MINERALS
LTD. and PEBBLE LIMITED
PARTNERSHIP,

Plaintiffs,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,

Defendant.

CASE NO. 3:24-cv-00059-SLG

**DECLARATION OF DANIEL L. CHEYETTE IN SUPPORT OF APPLICANT
INTERVENOR DEFENDANT BRISTOL BAY NATIVE CORPORATION'S
MOTION TO INTERVENE (Fed. R. Civ. P. 24)**

I, Daniel L. Cheyette hereby declare as follows:

1. I submit this declaration in support of Bristol Bay Native Corporation's ("BBNC") Motion to Intervene as a defendant in the above-captioned case. I have personal knowledge of the matters set forth herein.

DECLARATION OF DANIEL L. CHEYETTE

Northern Dynasty Minerals Ltd. v. EPA, Case No: 3:24-cv-00059-SLG

Case 3:24-cv-00059-SLG Document 21-5 Filed 05/17/24 Page 1 of 9

Page 1

2. BBNC is the Alaska Native Claims Settlement Act (“ANCSA”) regional corporation for the Bristol Bay region, serving more than 12,000 Eskimo, Aleut, and Athabascan shareholders with ancestral ties to the Bristol Bay region.

3. As part of its ANCSA settlement, BBNC received patent to nearly 3 million acres of subsurface lands and more than 115,000 acres of surface lands within the Bristol Bay region. BBNC is committed to managing and developing these lands and resources in a responsible manner for the benefit of the corporation’s shareholders and descendants.

4. I have worked at BBNC since 2011. I am currently Senior Vice-President for Lands and External Affairs, and in the past have served as Vice-President of Lands and Resources and Associate General Counsel. In all of these roles, I have worked extensively on land and resource management issues in Bristol Bay, including but not limited to BBNC’s advocacy on Pebble mine and other resource development issues.

5. My work at BBNC puts me in contact with the corporation’s shareholders, staff, and Board members. I have worked closely with these individuals to help BBNC develop and further its economic goals and its commitment to preserving a traditional subsistence lifestyle and a sustainable relationship with salmon for future generations.

6. My responsibilities at BBNC include working across departments to assist the corporation’s management team with decisions regarding BBNC’s lands, land and resource policies, and land and resource advocacy. In this role, I also directly assist with our Board’s resolution process, drafting and deliberating on Board resolutions related to

DECLARATION OF DANIEL L. CHEYETTE

Northern Dynasty Minerals Ltd. v. EPA, Case No: 3:24-cv-00059-SLG

Case 3:24-cv-00059-SLG Document 21-5 Filed 05/17/24 Page 2 of 9

Page 2

these same topics. Once the Board adopts resolutions, my responsibilities include working to ensure that BBNC acts in accordance with those resolutions.

7. BBNC's mission is "Enriching our Native Way of Life." BBNC's vision is "To responsibly steward the land and waters in the Bristol Bay region, celebrate the legacy of its people, and enhance the lives of BBNC shareholders." BBNC's values include "respect[ing] the people, land, and natural resources that are the basis for our culture and the Native way of life" and "responsibly manag[ing] natural resources, prioritizing the cultural and economic value of the Bristol Bay fishery." To further its mission, BBNC's Board of Directors has approved multiple resolutions that evidence the corporation's land management philosophy. These include a "Resource Protection Policy" (BBNC Resolution 09-41, December 11, 2009) that describes the cultural and economic importance of Bristol Bay's sockeye salmon runs and announces BBNC's opposition to the Pebble mine. A resolution "In Support of Responsible Resource Development" (BBNC Resolution 11-28, December 7, 2011) that specifies that BBNC's policy of resource development in the region "is sensitive to fiscal, environmental, and social sustainability concerns including the protection of subsistence culture, practices, clean water, and healthy fish." And lastly a "Fish First Priority" resolution (BBNC Resolution 13-11, May 17, 2013) that acknowledges that "sustainable fisheries continue to be the cultural, subsistence and economic cornerstones of the Bristol Bay region," and affirms that BBNC's input on land management decisions in the Bristol Bay region on lands not owned by BBNC will be "guided by a priority protection for fish and fish habitat."

DECLARATION OF DANIEL L. CHEYETTE

Northern Dynasty Minerals Ltd. v. EPA, Case No: 3:24-cv-00059-SLG

Case 3:24-cv-00059-SLG Document 21-5 Filed 05/17/24 Page 3 of 9

8. In furtherance of BBNC’s mission, vision, values, and resolutions, BBNC has formally opposed efforts to mine the Pebble Deposit for nearly 15 years. As such, BBNC has a significant interest in the Environmental Protection Agency’s (“EPA”) Clean Water Act § 404(c) protections as well as the U.S. Army Corps of Engineers (“the Corps”) Clean Water Act § 404 permitting process. BBNC has been an active participant in both these processes, including but not limited to engaging in numerous public hearings and meetings with the agencies, crafting and submitting thousands of pages of detailed public comments.

9. On August 12, 2010, BBNC petitioned EPA to commence a review process under § 404(c) of the Clean Water Act. BBNC urged EPA to review the harmful impacts on salmon from large-scale mining and take action to protect the region’s extraordinary water and salmon resources. As BBNC said in its petition, the proposed Pebble mine development “poses an unacceptable risk to our shareholders, their subsistence-based livelihoods, and the prospects for the future, long-term economic development opportunities for the region.” BBNC’s decision to submit a petition to EPA was influenced by uncertainty and upheaval in the region caused by the threat posed by the proposed Pebble mine, the concern of the Tribes, and the overwhelming outcry of our shareholders.

10. BBNC’s petition was overwhelmingly supported by our shareholders, with 81% of the respondents in a late-2011 shareholder poll opposed to large-scale mining development in the Bristol Bay watershed. In polling of BBNC shareholders in 2019, 85%

DECLARATION OF DANIEL L. CHEYETTE

Northern Dynasty Minerals Ltd. v. EPA, Case No: 3:24-cv-00059-SLG

Case 3:24-cv-00059-SLG Document 21-5 Filed 05/17/24 Page 4 of 9

Page 4

of respondents were concerned about the potential risks Pebble posed to Bristol Bay and its salmon runs and 76% opposed the project.

11. I am familiar with the scientific, peer review, and public processes undertaken by EPA following BBNC's § 404(c) petition through the Final Determination issued in February 2023, as well as the Corps permitting process from 2018-2020 leading to denial of a Clean Water Act § 404 permit for mining the Pebble deposit. From 2011 to the present, BBNC and its shareholders have been involved in EPA's process, analyzing the science and peer review, submitting comments, attending meetings, defending EPA's § 404(c) authority in the courts and in the administrative process, and testifying at public hearings hosted throughout the Bristol Bay region. Overall, BBNC formally participated in five rounds of public comment opportunities provided by EPA and two rounds of public comment opportunities provided by the Corps.¹ Through these processes, BBNC has crafted and submitted thousands of pages of detailed, technical information about Bristol Bay's salmon, waters, ecosystems, economy, and culture to support EPA's findings that the proposed Pebble Mine would lead to unacceptable adverse effects.

¹ On July 23, 2012, BBNC submitted comments on EPA's Watershed Assessment First Draft. On Jun 28, 2013, BBNC submitted comments on EPA's Watershed Assessment Second Draft. On September 19, 2014, BBNC submitted comments on the EPA's Proposed Determination. On October 17, 2017, BBNC submitted comments on the EPA's proposal to withdraw the 2014 Proposed Determination. Finally, on September 6, 2022, BBNC submitted comments on the EPA's Revised Proposed Determination. In addition, on June 29, 2018, BBNC submitted comments to the Corps for its scoping process and on July 1, 2019, BBNC submitted comments to the Corps on its draft Environmental Impact Statement.

DECLARATION OF DANIEL L. CHEYETTE

Northern Dynasty Minerals Ltd. v. EPA, Case No: 3:24-cv-00059-SLG

Case 3:24-cv-00059-SLG Document 21-5 Filed 05/17/24 Page 5 of 9

Page 5

12. BBNC also expended significant resources to attend, track, and analyze EPA's public comments docket and testimony at twenty public hearings hosted by the agency.² For example, during the two public comment periods on EPA's Bristol Bay Watershed Assessment in 2012 and 2013, BBNC tabulated the more than 1.1 million public comments received by EPA and found that, in the Bristol Bay region, an overwhelming 97.98% of more than 1,800 local comments and testimony supported EPA's preparation of the assessment. During the public comment period on EPA's 2014 Proposed Determination, BBNC tabulated that more than 670,000 written public comments, 99% of which supported the agency's proposal. In addition, during EPA's 2014 public hearings in the Bristol Bay region, BBNC observed that 82% of those testifying supported the agency's proposal. Again, during EPA's 2017 public comment period on the 2014 Proposed Determination, BBNC tabulated more than one million written public comments, with 99.9% of those commenting supporting the agency's proposal. Finally, during EPA's 2022 public hearings, BBNC tabulated that 91% of the more than 100 people testifying supported EPA's 2022 Proposed Determination.

13. Over the years, I have attended public meetings hosted by EPA regarding Pebble in the communities of Anchorage, Dillingham, Iliamna, Levelock, Kokhanok, Naknek, Newhalen, and New Stuyahok. I have also reviewed reports regarding EPA public

2 In 2012, EPA hosted 8 public hearings in New Stuyahok, Anchorage, Nondalton, Dillingham, Igiugig, Naknek, Seattle, and Levelock. In 2014, EPA hosted 7 public hearings in Dillingham, New Stuyahok, Anchorage, Kokhanok, Nondalton, Iliamna, and Igiugig. In 2017, EPA hosted 2 public hearings in Dillingham and Iliamna. Finally, in 2022, EPA hosted 3 public hearings in Dillingham, Iliamna, and virtually.

DECLARATION OF DANIEL L. CHEYETTE

Northern Dynasty Minerals Ltd. v. EPA, Case No: 3:24-cv-00059-SLG

Case 3:24-cv-00059-SLG Document 21-5 Filed 05/17/24 Page 6 of 9

Page 6

meetings about Pebble in other locations. I have listened to the shareholders at repeated annual shareholder meetings as they passionately spoke to their concern for the fish, subsistence lifestyle, communities, descendants, and the health of the fishery. From these experiences, I can attest to BBNC's and BBNC's shareholders' dedicated investment in this public process and the pervasive harms articulated at these meetings over the years. The following comments are a selected few out of many from BBNC shareholders and regional residents regarding the present and on-going harms associated with the proposed development of the Pebble deposit and the harms from delays in moving forward with the 404(c) process:

- “We have been in this battle long enough. We want to see something start happening that can assure Alaska native people in this area that our waters, our way of life will continue to be protected.”
- “My biggest concern is the future of the fishery. We need clear water here ... So I think my biggest concern is the future of the fishery. If that mine is developed up there, I think it's going to be -- it's going to be terrible on the water....[T]he salmon and the commercial fishery provides us with the cash, cash that we need for other products, ammunition, flour, and all the other things we need for -- to -- to exist out here.”
- “The subsistence, commercial and the sport fishers must be protected and be held risk free. The risks and impacts to our salmon culture are formidable and unacceptable. We cannot afford to speculate on the success or non-success of the Pebble Project going forward. We cannot afford either.”
- “As I stand here in front of you today, my mind isn't really here. It's at home with my children that I've left for the fourth time this month on Pebble-related causes. It's on my subsistence net I was supposed to mend. It's on getting fish ready, the birch trees we were supposed to cut, it's on my cabin and boat rentals, it's on my clients I get in seven days for the sport fishing opener. It's on my school board meeting I'll be missing. It's on canning jars, bug spray for the baby, and another toy I'd better get for the quilt trip present. Standing here in front of you today, talking about a mining giant threatening my entire way of life wasn't what I ever could have planned for . . .”

DECLARATION OF DANIEL L. CHEYETTE

Northern Dynasty Minerals Ltd. v. EPA, Case No: 3:24-cv-00059-SLG

Case 3:24-cv-00059-SLG Document 21-5 Filed 05/17/24 Page 7 of 9

- “It’s been a decade that the threat of this mine has hung over our heads and for people in my generation investing in the fishery, buying in is a huge leap and financial risk and I see it as one that our fishery will pay back to us as long as we make sure that the habitat remains there.... For a fishery to be successful we need continued investment and for that we need the trust that our government is looking out for us. ... And now we need action. We can’t wait any longer; we can’t let the threat of this hang over us anymore.”
- “As a business owner I have operated under the shadow of Pebble mine long enough.”
- “Any perception amongst salmon consumers that a toxin producing industrial mining complex is operating in the heart of our fishery will damage our marketability ... Acting proactively will also protect the mining industry by providing certainty of what standards would need to be met for any mineral development to occur.”

14. Due to the importance of protecting the lands and waters of Bristol Bay from the threat posed by the proposed Pebble Mine, over the years BBNC has engaged in litigation where necessary to further BBNC’s interests in Clean Water Act § 404(c) protections for Bristol Bay, as seen in our participation as intervenor-defendants in *Pebble Limited Partnership v. EPA*, Case No. 3:14-CV-0097-HRH and as amici curiae in an original action filed in the United States Supreme Court in *State of Alaska v. United States*, Case No. 22O157.

15. Likewise, the present case has the potential to substantially affect BBNC’s interests in the Bristol Bay region as well as in its implementation of its corporate policies supporting responsible management of the land and waters in the Bristol Bay region, as well as the cultural, subsistence, and economic interests of BBNC’s shareholders. If Plaintiffs prevail on the merits of their claims and obtain the relief sought, EPA will be prevented from doing what BBNC and its shareholders have been urging EPA to do for

DECLARATION OF DANIEL L. CHEYETTE

Northern Dynasty Minerals Ltd. v. EPA, Case No: 3:24-cv-00059-SLG

Case 3:24-cv-00059-SLG Document 21-5 Filed 05/17/24 Page 8 of 9

Page 8

almost 15 years—use its Clean Water Act authority to impose restrictions on any large-scale hard rock mining efforts to develop the Pebble deposit. Therefore, the uncertainty and cultural, social, and economic stress that uncertainty engenders will continue to impact BBNC and its shareholders.

16. For the foregoing reasons, I believe it is essential that BBNC's interests be adequately represented and that BBNC be allowed to intervene in this case as of right and permissively.

17. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 13, 2024.



Daniel L. Cheyette
Senior Vice President, Lands and External Affairs
Bristol Bay Native Corporation

DECLARATION OF DANIEL L. CHEYETTE

Northern Dynasty Minerals Ltd. v. EPA, Case No: 3:24-cv-00059-SLG

Case 3:24-cv-00059-SLG Document 21-5 Filed 05/17/24 Page 9 of 9